

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

LARRY PORTER,

Petitioner,

v.

9:07-CV-0490
(LEK/GJD)

DAVID NAPOLI,

Respondent.

APPEARANCES:

OF COUNSEL:

LARRY PORTER
88-A-4542
Petitioner, *pro se*

LAWRENCE E. KAHN
United States District Judge

DECISION AND ORDER

Petitioner Larry Porter filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on May 1, 2007. Dkt. No. 1. Petitioner thereafter filed an Amended Petition. Dkt. No. 4. The Amended Petition was denied and dismissed by Decision and Order of this Court filed on July 25, 2007. Dkt. No. 6. Judgment was entered in favor of Respondent on July 25, 2007. Dkt. No. 7. Petitioner filed a Notice of Appeal on August 6, 2007. Dkt. No. 8. Presently before the Court is a Motion for a Certificate of Appealability ("COA") filed by Petitioner. Dkt. No. 11.

Section 2253(c)(1) of Title 28 of the United States Code provides, in pertinent part, that

[u]nless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from –
(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or
(B) the final order in a proceeding under section 2255.

28 U.S.C. § 2253(c)(1).¹

Furthermore, the Court may issue a certificate of appealability “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).

After reviewing the relevant portions of the file, and for the reasons set forth in this Court’s July 25, 2007 Decision and Order, the Court finds that Petitioner has failed to make the required showing. Therefore, the Court denies his request for a COA.

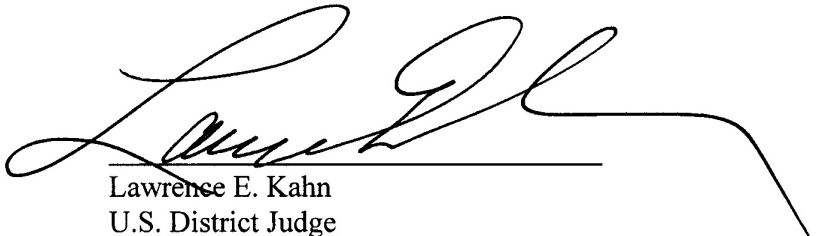
WHEREFORE, it is hereby

ORDERED, that Petitioner's motion for a Certificate of Appealability (Dkt. No. 11) is **DENIED**, and it is further

ORDERED, that the Clerk of the Court serve a copy of this Order upon Petitioner in accordance with the Local Rules.

IT IS SO ORDERED.

DATED: October 04, 2007
 Albany, New York


Lawrence E. Kahn
U.S. District Judge

¹ Likewise, Rule 22 of the Federal Rules of Appellate Procedure provides, in pertinent part, that “[i]n a habeas corpus proceeding in which the detention complained of arises from process issued by a state court, or in a 28 U.S.C. § 2255 proceeding, the applicant cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c).” Fed. R. App. P. 22(b)(1).